



January 5, 2005

VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

Re: In the Matter of Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. §
160(c) Pertaining to Qwest's xDSL Services; WC Docket No. 04-416

Dear Ms. Dortch:

Attached are comments of the Association for Local Telecommunications Services
("ALTS") for filing in the above-captioned proceeding.

Sincerely,

/s/

Teresa K. Gaugler

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Petition of Qwest Corporation for)	
Forbearance Pursuant to 47 U.S.C. § 160(c))	
Pertaining to Qwest's xDSL Services)	WC Docket No. 04-416
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**COMMENTS OF THE
ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES**

The Association for Local Telecommunications Services ("ALTS") hereby files its comments in the above-referenced proceeding in response to the Commission's Public Notice¹ regarding Qwest's Petition requesting forbearance from certain regulations regarding its xDSL services.² In its petition Qwest joins BellSouth's recently filed Petition for Forbearance from (1) *Computer Inquiry* requirements that compel ILECs to tariff and offer the transport component of their broadband services on a stand-alone basis and to take service itself under those same terms and conditions, and (2) all Title II common-carriage requirements that might otherwise apply to ILEC broadband transmission.³ ALTS filed comments opposing BellSouth's petition and reiterates its opposition to such deregulation in this proceeding.⁴ Qwest specifically requests

¹ *Pleading Cycle Established for Comments on Petition of the Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) Pertaining to Qwest's xDSL Services*, Public Notice, WC Docket No. 04-416 (rel. November 16, 2004).

² Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) Pertaining to Qwest's xDSL Services; WC Docket No. 04-416 (filed November 10, 2004) ("Qwest Petition").

³ Petition of the BellSouth Telecommunications, Inc. for Forbearance Under 47 U.S.C. § 160(c) From Application of Computer Inquiry and Title II Common-Carriage Requirements; WC Docket No. 04-405, at 1 (filed October 27, 2004) ("BellSouth Petition").

⁴ See ALTS Comments, WC Docket No. 04-405 (filed December 20, 2004).

immediate relief for its retail xDSL services, including forbearance from dominant carrier tariff regulation, rate averaging, and resale at an avoided cost discount.⁵ Qwest may be entitled to certain relief for its retail services if sufficient retail competition exists; however, any finding regarding the retail broadband market must not affect Qwest's obligation to provide wholesale services, where it remains the dominant provider of bottleneck wireline facilities.

Qwest acknowledges in its petition that the Commission is already considering possible regulatory relief for wireline broadband services in pending rulemaking petitions yet insists on filing this petition to push the Commission into expediting those so-called "stalled" proceedings.⁶ Through these forbearance petitions, the ILECs continue to ask the Commission to remove regulations that, if granted, would stifle the deployment of nascent broadband Internet access services, and in particular, would throttle the competitive deployment of innovative Voice over Internet Protocol (VoIP) services. The Commission should not yield to this pressure but should continue with its deliberation in those rulemaking proceedings where a complete record has been developed. ALTS has opposed deregulation of the ILEC's broadband transmission services in those proceedings and hopes the Commission will continue to foster wireline broadband competition by maintaining appropriate regulation of ILEC transmission facilities.

I. Forbearance from Computer Inquiry and Title II Requirements to ILEC Broadband Transmission Services is Not in the Public Interest.

The ILECs contend that they are not dominant carriers in the provision of broadband services,⁷ while ignoring their ongoing dominant status as wireline wholesale and retail

⁵ Qwest Petition at 3.

⁶ *Id.* at 2.

⁷ Qwest Petition at 18; BellSouth Petition at 29.

providers. They argue that the broadband market is suitably competitive to curb any anticompetitive behavior by the ILECs;⁸ however, their data refer solely to the retail broadband market, not the wholesale market for underlying wireline facilities. There is no question that Qwest and other ILECs have market power in the provision of transmission facilities for wireline broadband services. Furthermore, ILECs have an incentive to abuse their market power to disadvantage broadband rivals, by charging higher prices to rivals for essential inputs, providing rivals with poor quality interconnection, or imposing unnecessary delays.

Both BellSouth and Qwest have cited “intermodal” competition from cable modem providers as a sufficient safeguard in the absence of regulation.⁹ When the Bells purport to provide a competitive justification for the results they seek, they conjure up a foggy state of “intermodal” competition. But they never come to grips with the mandate of the 1996 Act to promote *wireline* intramodal competition to ILECs. Equally importantly, the Bells never adequately define the markets in which the effects of “intermodal competition” will supposedly be felt or properly assess the market power they will retain if their wishes come true. This failure to conduct a proper competitive analysis is not surprising, because it is clear that the actions the Bells have in mind will leave them with market power in all markets and clear monopoly status with respect to significant classes of consumers.¹⁰

Again and again, the ILECs point to competition in the retail market to justify deregulation of their wholesale services, when such a direct correlation between those markets

⁸ Qwest Petition at 18; BellSouth Petition at 6.

⁹ Qwest Petition at 15-18; BellSouth Petition at 31.

¹⁰ See ALTS Reply Comments on *Broadband NPRM*, CC Docket Nos. 02-33, 95-20, 98-10, at 3-4 (filed July 1, 2002).

simply does not exist. It is questionable whether intermodal competition from cable modem providers would discipline ILEC anti-competitive behavior in the *retail* market without regulatory safeguards, but it would certainly not discipline the ILECs' anticompetitive behavior in the *wholesale* market for last-mile bottleneck facilities, where the ILECs maintain a monopoly. The ILECs do have market power in the wireline market, for both retail and wholesale DSL services, and they would be one of two broadband providers in the overall broadband market if all competitors are eliminated except cable modem providers.

ILECs have every incentive to abuse that market power to the disadvantage of their competitors, which include CLECs and ISPs. The broadband market has greatly benefited from the ISPs' ability to gain access to ILEC transmission facilities, and consumers would be harmed without such nondiscriminatory access. In particular, given the Commission's recent actions limiting CLEC access to loop and transport facilities, VoIP providers and other ISPs that are not affiliated with an ILEC will have no means of getting to the end user. Thus, should the Commission provide the ILECs with the relief requested, they will have the instant ability to shut off access to nonaffiliated VoIP providers, decimating a nascent industry that would otherwise bring low cost, innovative new services to consumers and small businesses.

II. Even if Qwest is Subject to Retail Competition, Qwest Still Controls Bottleneck Facilities and is the Dominant Provider of Wholesale Wireline Facilities.

Although the existence of facilities-based competition may lead to the existence of competitive retail alternatives, retail competition alone does not equate to wholesale competition. The existence of alternatives for retail customers does not equate to the existence of alternatives for wholesale customers; therefore, the status of retail competition should not be used as a basis for eliminating wholesale competition and competitive access to Qwest facilities. While retail

competition may reduce Qwest's ability to raise prices above competitive levels, to reduce the quality of its services, to reduce innovation or to restrict its output for *retail* services, it will not necessarily curb anticompetitive behavior in the wholesale market. In fact, most of the CLECs operating in Qwest's territory will affirm that Qwest wholesale performance has been consistently poor despite the regulatory requirements and safeguards already in place. Certainly without those requirements, one could predict that Qwest's wholesale performance would continue to deteriorate.

Qwest requests "freedom to negotiate commercial agreements with its carrier customers, [] which may, or may not, reflect an avoided cost discount."¹¹ Qwest may be entitled to certain relief for its retail services, such as reduced tariffing obligations, if the Commission determines that it is subject to sufficient retail competition. However, such a finding should have no impact on Qwest's obligation to provide wholesale services to competitors, including providing its mass market DSL services for resell at avoided cost rates. Regardless of whether there are other facilities-based providers of broadband services, Qwest controls the bottleneck facilities for provision of wholesale DSL services and should not be permitted to reduce its obligation to provide those services at an avoided cost discount. Particularly because of the Commission's recent elimination of certain broadband loops and transport from unbundling requirements, it must ensure that competitive carriers have an option to provide competing xDSL services. Qwest's offer to retain a resale offering, albeit at a negotiated rate, is meaningless if the rates it demands are excessive. Thus, without the ongoing obligation to offer resale services at an avoided cost discount, Qwest would be able to control whether and which carriers could obtain

¹¹ Qwest Petition at 23.

xDSL services for resale, merely by refusing to negotiate a reasonable rate.

Qwest argues that elimination of these requirements is in the public interest and will benefit consumers merely because it would reduce the regulatory asymmetry.¹² Qwest argues that CLECs are able to compete in the provision of xDSL unencumbered by dominant carrier regulations as justification for eliminating its own regulation.¹³ However, Qwest seems to ignore the fact that the telecommunications regulatory scheme, including asymmetrical treatment of providers, was established by Congress in the Telecom Act. Thus, certainly it was Congress's intent for certain carriers to be treated differently, at least until suitable levels of wholesale and retail competition exist. And until the goals and requirements of the Telecom Act are fully satisfied, Qwest must continue to be subjected to appropriate regulation because Congress deemed that to be in the best interests of consumers. Qwest complains that it is subject to regulation that is not imposed on its competitors; however, such asymmetrical regulation exists because Qwest still has market power and controls bottleneck facilities, whereas its competitors do not. The regulatory requirements imposed on Qwest serve a valuable purpose in the market today, and the Commission should not eliminate them merely because they are asymmetrical.

¹² *Id.* at 10.

¹³ *Id.* at 2.

CONCLUSION

For the foregoing reasons, ALTS urges the Commission to reject Qwest's forbearance petition. The Commission should instead focus on its rulemaking decisions that consider the appropriate regulatory treatment of broadband services and should grant regulatory relief where appropriate for retail service offerings only after careful consideration of the records in those proceedings.

Respectfully Submitted,

**Association for Local
Telecommunications Services**

By: /s/_____

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